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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1996

Addendum

LUXEMBOURG*

[30 October 2000]

* For the initial report of Luxembourg, see CAT/C/5/Add.29; for its consideration, see CAT/C/SR.107 and 108 and Official Records of the General Assembly, Forty-seventh session, Supplement No. 44 (A/47/44), paras. 285-309. For the second periodic report, see CAT/C/17/Add.20; for its consideration, see CAT/C/SR.376, 379 and 383 and Official Records of the General Assembly, Fifty-fourth session, Supplement No. 44 (A/54/44), paras. 170-175.

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Introduction

1. The Grand Duchy of Luxembourg hereby submits its third report to the Committee against Torture in accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. This report supplements the preceding reports submitted by Luxembourg. Several ministers have taken part in its preparation. Some non-governmental organizations were also contacted to provide their analysis of the situation in Luxembourg.

3. In accordance with the new guidelines for the submission of reports (CAT/C/14/Rev.1) adopted by the Committee against Torture on 2 June 1998, this report is divided into three parts, i.e. part I describing the most important changes in legislation and institutions, monitoring by the authorities and specific measures taken as a result of complaints filed by individuals; part II on the additional information requested by the Committee; and part III on measures taken to give effect to the Committee's conclusions and recommendations.

4. Many of the reforms which were referred to during the introduction to the second report and which have considerably strengthened the country's legislative arsenal have since been voted on by the Chamber of Deputies. New institutions have been established, including the Advisory Commission on Human Rights, the General Police Inspection Department and the new Grand Ducal Police, which was created following the merger of the former police and gendarmerie forces, and specific measures have been taken in certain areas, particularly with regard to the problem of prison suicide and drug addiction.

PART I

I. INFORMATION ON NEW MEASURES RELATING TO THE IMPLEMENTATION OF THE CONVENTION

A. Article 2

5. Torture and cruel treatment are punishable under the Luxembourg Penal Code:

(a) Directly, under the provisions specifically relating to acts of torture (chap. V-1, arts. 260-12 to 260-4, introduced by the Act of 24 April 2000);

(b) Indirectly, under the provisions relating to offences involving abuse of authority (art. 257 of the Penal Code) and wilful infliction of bodily harm (arts. 398 to 401 bis of the Penal Code);

(c) Directly, as an aggravating circumstance of a crime or offence against a person (for example, physical torture of a detainee: art. 438 of the Penal Code) or as an aggravating circumstance of a crime or offence against property (for example, extortion or theft committed with violence or with threats: art. 473 of the Penal Code);

(d) Under special laws (referred to in Luxembourg's additional report of 15 October 1991 (CAT/C/5/Add.29)).

6. The Act of 24 April 2000 adapting internal law to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the Act of 31 July 1987, incorporates a new chapter V-1 in book II of the Penal Code (arts. 260-1 to 260-4).

7. Previously, only acts committed by individuals against other individuals were specifically characterized as acts of torture by the Penal Code (art. 438). As a result of the introduction of the new article 260-1, the Penal Code now also specifically punishes acts of torture committed by persons in the public sector. The text of this provision, which is based broadly on the definition of acts of torture contained in article 1 of the Convention, reads:

> "Article 260-1. Any public official in a position of authority, any public servant or any one acting at the instigation or with the express or tacit consent of such an individual who wilfully inflicts torture in such a manner as to cause pain or acute physical or mental suffering in order to extract information or confessions from an individual or third party; to inflict punishment for an act which an individual or third party has either committed or is suspected of having committed; to intimidate or put pressure on an individual or third party; or for any other reason based on any form of discrimination whatsoever shall be punishable by five to 10 years' imprisonment."

8. Articles 260-2, 260-3 and 260-4, which gradually increase the penalties depending on the type of harm or injury resulting from acts of torture, read:

> "Article 260-2. If the torture inflicted has resulted in illness or incapacity for work, the penalty shall be 10 to 15 years' imprisonment.
>
> Article 260-3. If the torture inflicted has resulted in apparently incurable illness, permanent incapacity for work, complete loss of use of an organ or severe mutilation, the penalty shall be 15 to 20 years' imprisonment.
>
> Article 260-4. If the torture inflicted has caused death, albeit unintentionally, the penalty shall be life imprisonment."

9. It should be noted that these provisions relate not only to traditional physical torture, but also to mental torture, which is more subtle and more a reflection of modern times.

10. Even if such acts are still fortunately unknown in Luxembourg at present, criminal legislation has been adapted in order better to guarantee the prevention and punishment of this type of conduct.

B. Article 3

11. This article of the Convention prohibits the expulsion, return ("refoulement") or extradition of a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture or similar treatment.

12. Article 14, paragraph 3, of the Act of 28 March 1972 (amended) on (1) the entry and residence of aliens; (2) medical examinations for aliens; and (3) the use of foreign labour states that an alien may not be expelled or deported to another country if it can be established that he would be subjected to the treatment referred to in articles 1 and 3 of the Convention (see the 1991 report (CAT/C/5/Add.29) and the 1998 report (CAT/C/17/Add.20) of Luxembourg).

13. The Kosovo crisis showed that the basic provisions of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and ratified by Luxembourg by means of the Act of 22 May 1953, and the national procedure provided for by the Act of 3 April 1996 on the consideration of asylum applications were no longer suitable and did not enable the authorities to handle asylum applications within a reasonable time when a large-scale inflow of refugees occurred.

14. With the encouragement of the Office of the United Nations High Commissioner for Refugees (see opinion of 13 September 1999, parliamentary document No. 4572/5), the lawmakers set up two additional systems by means of the Act of 18 March 2000 establishing a temporary protection regime and amending the Act of 3 April 1996 (amended) establishing a procedure for the consideration of asylum applications:

(a) A temporary protection regime to enable the authorities to deal speedily, in a well-defined case of a large-scale inflow of asylum-seekers, with the asylum-seekers' legal and administrative situation during their stay in Luxembourg territory;

(b) A measure by the Aliens Department enabling the Minister of Justice to grant special status to asylum-seekers whose deportation is materially impossible.

15. The Act of 24 April 2000 adapting internal law to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also adds some provisions to the Foreign Criminals Extradition Act of 13 March 1870.

16. In particular, the following article 8-1 was included in the 1870 Act:

> "Article 8-1. No person shall be extradited where there are substantial grounds for believing that he would be in danger of being subjected to torture as defined in articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms."

C. Article 4

17. As already indicated in connection with article 2 above, in addition to the provisions of the Penal Code on murder and wilful infliction of bodily harm (arts. 398 et seq. of the Penal Code) and the provisions relating specifically to acts of torture inflicted by individuals (art. 438 of the Penal Code), which provide for terms of imprisonment varying in length according to the seriousness of the harm or injury suffered by the victim, articles 260-1 to 260-4, which were recently introduced in the Penal Code by the Act of 24 April 2000 adapting internal law to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also provide for a system by which prison terms vary according to the harm or injury suffered by the victim of acts of torture.

18. Just as acts of torture are characterized as crimes, so are attempt and complicity (book I, chap. IV: "Attempted crimes and offences", arts. 51 and 52 of the Penal Code, and chap. VII: "Participation by several persons in the same crime or offence", arts. 66 to 69).

D. Article 5

19. In addition to the classification of acts of torture in articles 260-1 to 260-4, the Act of 24 April 2000 has, in accordance with article 5, paragraph 1 (c), of the Convention, introduced a new article 7-3 in the Code of Pre-Trial Proceedings, which reads:

> "Article 7-3. Anyone outside the territory of the Grand Duchy who has committed one of the offences provided for in articles 260-1 to 260-4 of the Penal Code against a citizen or resident of Luxembourg can be prosecuted and tried in the Grand Duchy.
>
> However, no proceedings shall be instituted against an accused person who has been tried for the same offence in a foreign country and acquitted.
>
> The same shall apply if, having been tried and convicted, he has served his sentence or the punishment has been time barred or he has been pardoned.
>
> Any period of detention served abroad in consequence of the offence which gives rise to a conviction in the Grand Duchy shall be set against the period of any custodial sentence."

20. This new article thus establishes extraterritorial jurisdiction for Luxembourg courts in order to cover the case in which the victim of one of the acts referred to articles 260-1 to 260-4 of the Penal Code is a Luxembourg national or a resident of the Grand Duchy.

21. In accordance with the objectives of article 3, paragraph 1, and article 5, paragraph 2, of the Convention and in order to ensure that the perpetrator of an act of torture within the meaning of articles 260-1 to 260-4 of the Penal Code does not go unpunished as a result of non-extradition, the Act of 24 April 2000 established active universal jurisdiction by introducing the following new article 7-4 in the Code of Pre-Trial Proceedings:

"Article 7-4. Anyone in a foreign country who has committed one of the offences provided for in articles 260-1 to 260-4 of the Penal Code can be prosecuted and tried in the Grand Duchy when an application for extradition has been submitted, but the person concerned has not been extradited."

E. Article 6

22. It should be pointed out that, on the basis of the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its two reports to the Government of Luxembourg dated 12 November 1993 and 27 June 1997, the Act of 24 April 2000 also updated the guarantees available to any person in detention under article 39 (police custody) and article 45 (identity check) of the Code of Pre-Trial Proceedings.

23. With regard to police custody, as referred to in article 39 of the Code of Pre-Trial Proceedings, a detainee is now formally informed by law enforcement officials, at the time of his arrest and in a language he understands, except in duly recorded cases of material impossibility, of his right to ask to be examined by a medical officer and his right to the assistance of legal counsel. He is also informed of his right to notify a person of his choosing, if the requirements of the investigation so permit.

24. Article 39, paragraph 8, now provides that a detainee's records must also indicate the day and time at which he was informed of his rights, as well as, if necessary, the reasons for a denial of or a delay in the implementation of his right to notify a person of his choosing.

25. In practice, a pre-printed note listing the rights to which he is entitled and drafted in a language he understands is to be handed to the detainee at the time of his arrest.

26. The procedure for identity checks referred in article 45 also now makes it an obligation for law enforcement officials to provide the person detained for an identity check with a formal notification in writing, against a receipt and in a language he understands, except in duly recorded cases of material impossibility, of his right to notify a person of his choosing and to have the Public Prosecutor informed.

F. Article 7

27. The Act of 24 April 2000 adapting internal law to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also provided for additions to the list contained in article 1 of the Foreign Criminals Extradition Act (amended) of 13 March 1870 on offences for which extradition may be granted and for the inclusion of the offences referred to in the new articles 260-1 to 260-4 of the Penal Code.

28. If, as an exception, Luxembourg did not extradite a person wanted by another State for trial on a charge of torture, that person would be tried by Luxembourg courts either on the basis of their jurisdiction under article 5 of the Code of Pre-Trial Proceedings, in the case of a Luxembourg national, or, more generally, on the basis of the new article 7-4 of that Code (see art. 5 above).

29. The obligations deriving from article 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are directly applicable in Luxembourg.

G. Article 8

30. The obligations deriving from article 8 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are also directly applicable in Luxembourg, so that, as far as Luxembourg is concerned, the offences referred to in article 4 of the Convention are automatically included in any extradition treaty concluded with another party to the Convention.

31. As stated above in connection with article 7, the Act of 24 April 2000 made some additions to the list of offences in the Foreign Criminals Extradition Act (amended) of 13 March 1870 for which the courts may, in the absence of a treaty, order the extradition of a foreign criminal in the Grand Duchy of Luxembourg to the requesting foreign authorities.

H. Article 9

32. As a result of the adoption of the Act of 8 August 2000 on International Judicial Assistance in Criminal Matters, Luxembourg has new legislation on judicial assistance that substitutes more complete regulations for the earlier regime, which consisted only of the provisions of article 59 of the Judicial Organization Act (amended) of 7 March 1980.

33. It should also be pointed out that Luxembourg and its European Union partners recently signed the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, which supplements earlier instruments that are binding on those States.

I. Article 10

34. With regard to the education and training of persons who may be in contact with any individual subjected to any form of arrest, detention or imprisonment, it should be noted that, at the time of recruitment, future police and criminal investigation officers are given a psycho-technical test monitored by a psychologist. In order to guarantee training in the prevention of any abuse of police powers, the subjects taught at the Police Training School are very diversified and include: constitutional freedoms, the rights and duties of officials, assistance to victims, conduct vis-à-vis citizens, conduct in situations of violence, conflict management, police ethics, human rights, the rules contained in the Code of Pre-Trial Proceedings, the Penal Code and special laws, the conduct of an investigation, the hearing of evidence and response methods. Now that the former police and the former gendarmerie form a single Grand Ducal police force, police training has also been standardized by the Police Training School.

35. In order to give future police officers the best training, as well as high-quality in-service instruction, courses are taught by persons with the most thorough knowledge of the subjects offered, i.e. by senior police officials and, in the case of the ethics course, by the Grand Ducal General Police Inspector or by professors or lecturers.

36. On the basis of such instruction, the "human rights" course is coordinated with representatives of Amnesty International and role playing courses are organized in cooperation with the Support Association for Immigrant Workers (ASTI).

37. The report on the training of prison staff is annexed to the present report. Since prison guards have to perform voluntary military service, they receive instruction in human rights and the prevention of torture during their basic training.

38. Respect for the inherent dignity of the human person is a primary obligation of prison administrators and is provided for in article 16 of the Grand Ducal regulations of 24 March 1989 on the internal administration and regulations of prisons. In addition to the related provisions of the Penal Code, article 52 prohibits, inter alia, prison staff from committing acts of torture or cruel, inhuman or degrading treatment or punishment and acts of violence against detainees and from using insulting, vulgar or familiar language with them.

39. The staff of State Socio-Educational Centres is composed of the following:

(a) Educator instructors;

(b) Educators;

(c) Graduate educators;

(d) Psychologists and social welfare workers.

40. They receive three types of training:

(a) Administrative Training Institute (IFA) courses, which relate primarily to the subject of the rights of the child;

(b) Workshops (four in 1999);

(c) Supervision.

J. Article 11

41. In accordance with articles 15-2 and 21 of the Code of Pre-Trial Proceedings, the supervision and monitoring of the criminal investigation service as a whole, i.e. criminal investigation police officers and officials and agents empowered by law to act as criminal investigation police officers acting in that capacity, are the responsibility of the Public Prosecutor.

42. As indicated above in connection with article 6, the guarantees to which a detainee is entitled and which the lawmakers provided for in articles 39 and 45 of the Code of Pre-Trial Proceedings on police custody and identity checks by law enforcement officials were supplemented by the Act of 24 April 2000.

43. Henceforth, a person arrested by law enforcement officials is informed in writing and against a receipt, in a language he understands, of his right to communicate with a person of his choosing. A telephone is made available to him for this purpose.

44. A person arrested by law enforcement officials is also informed, according to the same methods, at the time of arrest, of his right to be examined without delay by a medical officer. Intervention by a medical officer may also be ordered by the Public Prosecutor at any time, as a matter of course or at the request of a family member.

45. If they consider it necessary, law enforcement officials may also summon a medical officer directly.

46. Prison management and surveillance come under the authority of the Public Prosecutor and the representative of the Public Prosecutor appointed especially for this purpose, respectively.

47. At the Dreiborn and Schrassig State Socio-Educational Centres, supervision is carried out by the Supervision and Coordination Commission (CSC), which is composed of representatives of the Minister of the Family, the Minister of National Education and the Public Prosecutor.

K. Article 12

48. There are no specific procedural provisions governing the crime of torture. However, ordinary law provides certain guarantees to ensure that an inquiry is opened.

49. For example, where criminal inquiries are concerned, the Public Prosecutor may take up the case ex officio. In practice, a preliminary inquiry is always ordered when injury to persons is suspected.

50. In criminal cases, referral to an examining magistrate is obligatory.

51. In disciplinary cases, an inquiry must be ordered by the commanding officer on learning of a serious breach of professional obligations. An allegation of police brutality, for example, is invariably considered to be a serious breach leading to disciplinary action.

52. A table of cases involving allegations of ill-treatment by police officers, with an indication of follow-up, is annexed to this report.

L. Article 13

53. Article 1 of the Code of Pre-Trial Proceedings states that: "Criminal proceedings for the enforcement of penalties are instituted and conducted by judges or officials specified by law. Proceedings may also be instituted by the injured party, under the conditions provided for in this Code or in special laws".

54. Ordinary law procedures are applicable to cases of torture or inhuman, cruel or degrading treatment. They guarantee the right of all victims to file a complaint, with either the criminal investigation police, the Public Prosecutor or an examining magistrate. This right is unlimited.

55. In its coalition agreement (governmental statement of August 1999), the Government indicated that it wanted to make further improvements in the situation of victims of offences by providing them with appropriate legal, material and moral assistance, which might be extended to members of their families. A bill designed to improve protection for the victims of offences and for witnesses is currently being prepared.

56. A victims' aid service has been in operation since 1997 as part of the Central Social Protection Service of the Public Prosecutor's Office.

M. Article 14

57. Under articles 2 and 3 of the Code of Pre-Trial Proceedings, a civil suit for compensation for loss or injury suffered by a victim of torture may be brought by the victim against the accused and his or her representatives, either before the court hearing the criminal proceedings or separately before a civil court.

58. The Act of 1 September 1988 relating to the civil liability of the State and public communities stipulates that the State and other public agencies are accountable, each in the framework of its public service mandate, for any loss or injury caused by the malfunctioning of their services, subject to the doctrine of res judicata.

59. Generally speaking, victims of intentional acts of violence or their rightful claimants are, when unable to obtain compensation through other means, for example, because the person responsible for the offence is not known or is insolvent, entitled to compensation from the State of Luxembourg under the conditions provided for by the Act (amended) of 12 March 1984 relating to compensation for certain victims of bodily injury and the punishment of fraudulent insolvency. This is an extra guarantee of compensation which the State provides to victims of violent crimes such as torture.

N. Article 15

60. The principle that evidence must be obtained through legal means is firmly established in French, Belgian and Luxembourg legal scholarship and legal decisions. There is thus little likelihood of a departure from this line, especially as, where evidence obtained under torture is concerned, article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is self-executing in Luxembourg.

61. To guarantee that judicial proceedings will be objective, article 52 of the Code of Pre-Trial Proceedings prohibits criminal investigation police officers from interrogating an accused person after his first appearance before the examining magistrate or, for any reason whatsoever, when the individual concerned is being held in pre-trial detention.

NBS 1010a ANSI/ISO #2 EQUIVALENT

O. Article 16

62. It should be noted at the outset that, in accordance with article 14 of the Luxembourg Constitution, no penalty may be established or applied except in accordance with a law.

63. Cruel, inhuman or degrading treatment or punishment other than torture is punishable under the Luxembourg Penal Code, as follows:

(a) Under the provisions relating to abuse of authority (art. 257) and wilful infliction of bodily harm (arts. 398 to 401 bis);

(b) As an aggravating circumstance of an offence against persons or property (for example, incitement to prostitution: art. 379 bis; extortion or theft committed with violence or with threats (art. 473));

(c) Under special laws (referred to in Luxembourg's initial report of 15 October 1991 (CAT/C/5/Add.29)).

64. Given that the traffic in human beings and the sexual exploitation of children also constitute inhuman and degrading treatment and are becoming an important and serious form of international crime, the Act of 31 May 1999 strengthening measures against the traffic in human beings and the sexual exploitation of children and amending the Penal Code and the Code of Pre-Trial Proceedings has strengthened the system of protection for children, adapted or supplemented the Penal Code on certain points and extended Luxembourg law to cover all sexual crimes or offences committed abroad by a Luxembourg national or a person residing in Luxembourg territory.

65. For example, article 379 of the Penal Code now punishes not only incitement of a young person to immorality, prostitution or corruption, as was formerly the case, but also all acts undermining morality or aimed at facilitating or fostering immorality, prostitution or corruption of a young person under 18 years of age. Similarly, the above-mentioned Act of 31 May 1999 punishes the exploitative use of a minor under 18 years of age in prostitution or pornographic performances or materials, as well as the traffic in minors for purposes of exploitation.

66. The Act also supplements article 379 bis of the Penal Code, which punishes, inter alia, the hiring, influencing or enticement of a person, even with his or her consent, for purposes of prostitution or immorality, by extending the cases carrying increased sentences referred to in the preceding text to include not only situations where the victim has been hired, influenced or enticed fraudulently or with violence, threats, abuse of authority or any other means of coercion and situations where the victim has actually been made to engage in prostitution or immorality, but also situations where the perpetrator of the offence has taken unfair advantage of a person's particularly vulnerable situation, such as an illegal or precarious administrative situation, pregnancy, illness, disability or physical or mental impairment.

67. The Act also introduces a new article to the Penal Code (art. 384) establishing penalties for the possession of pornographic material featuring children and increasing all applicable penalties.

68. Sexual harassment, which is considered to be degrading treatment, is now punishable under the Act of 26 May 2000 concerning protection against sexual harassment at work and amending various other laws. The lawmakers have thus shown that they are determined to take effective action against sexual harassment, a reflection of societal violence, through national labour legislation.

II. INFORMATION ON THE ESTABLISHMENT OF NEW INSTITUTIONS AND THE ADOPTION OF SOME SPECIAL MEASURES

69. In view of Luxembourg's commitment to democratic values, the Government, which is aware of the fact that a multisectoral, coherent policy in that area is essential, deemed it appropriate to set up a forum for analysis and innovation to achieve a dynamic partnership with civil society that will also be responsible for developing a human rights education programme.

70. On 26 May 2000, the Government therefore introduced regulations of the Government in council establishing the Advisory Commission on Human Rights.

71. The Commission is an advisory body to the Government and is responsible for assisting it, through studies and opinions, on all general human rights issues throughout the territory of the Grand Duchy of Luxembourg.

72. The Commission issues opinions and prepares studies, either on its own initiative or at the Government's request, and can propose measures and programmes of action to the Government which it considers conducive to the protection and promotion of human rights, in particular in academic, university and professional circles.

73. The Commission also acts as national correspondent for the European Monitoring Centre for Racism and Xenophobia.

74. The Act of 31 May 1999 establishing the Grand Ducal police force and the General Police Inspection Department, whose main objective is in fact to merge the police and the Gendarmerie, two institutions which have in the past functioned independently from each other, also set up a new institution, the General Police Inspection Department, which is responsible for monitoring the Grand Ducal police and is fully independent from it.

75. It has a twofold monitoring function covering both the lawfulness of police activities and the quality of police services. It works essentially on behalf of the Minister of the Interior, the Minister of Justice, the Public Prosecutor and the other judicial authorities.

76. Through the Act of 14 August 2000 approving the Rome Statute of the International Criminal Court, done at Rome on 17 July 1998, Luxembourg approved the Statute of the International Criminal Court, a permanent and independent court which tries the most serious crimes of concern to the international community as a whole.

77. As the Court's jurisdiction is unlimited ratione temporis and ratione loci, it includes the crimes of genocide (art. 6 of the Statute), crimes against humanity (art. 7) and war crimes (art. 8).

78. With regard to crimes against humanity, article 7 of the Statute explicitly defines torture as an act which may be defined as a crime against humanity when perpetrated as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

79. In its opinion of 4 May 1999 (parliamentary document No. 4502/1), the Council of State explained: "The Council of State wishes to draw attention to the provision contained in article 31, paragraph 1 (c), of the Statute. This provision, which is included among the grounds for excluding criminal responsibility, might prove to be weaker than those of other international law instruments to which Luxembourg is a party. These are, inter alia, the International Covenant on Civil and Political Rights (art. 4, para. 2) and the Convention for the Protection of Human Rights and Fundamental Freedoms (art. 15). Another such instrument is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 2, para. 2). These international law instruments do not permit the use of torture under any circumstances whatsoever, even in cases of war or threat of war, for example. This provision may be compared with article 22, paragraph 3, of the Statute, which stipulates (...). Consequently, the provision contained in article 31 of the Statute does not exempt Luxembourg from its obligations under other international law instruments to which it is a party and does not require national courts trying cases of prohibited conduct to examine the criminal responsibility of an accused person in the light of the provisions of the Rome Statute, which is particular to the International Criminal Court."

80. Judicial placement in a closed psychiatric establishment or service of an accused person found criminally irresponsible by the judge hearing the case was introduced by the Act of 8 August 2000 amending:

(a) Book I, chapter VIII, of the Penal Code;

(b) Article 3 of the Code of Pre-Trial Proceedings;

(c) The Act of 26 May 1988 relating to the placement of mentally disturbed persons in closed psychiatric establishments or services; and

(d) The Act of 27 July 1997 relating to the reorganization of the prison administration.

81. Former article 71 of the Penal Code, as contained in Book I, chapter VIII, of the Penal Code, entitled "Grounds for justification or excuse", provided simply that no offence was considered to have been committed when an accused was of unsound mind at the time of the offence or when he or she had been in the grip of an irresistible force.

82. However, this solution proved to be unsatisfactory both for the mentally ill offender and for society, as, when dealing with a mentally disturbed person who had committed a serious offence, the judge had no choice but to sentence the person in question to a criminal penalty or to acquit that person, if the mental disturbance was such that it could be characterized as dementia and the perpetrator of the offence could be considered to be criminally irresponsible. In the latter case, however, former article 71 of the Penal Code did not take account of the protection of the legitimate interests of society against the potential dangers which the disorders of certain offenders might create. The Act of 26 May 1988 relating to the placement of mentally disturbed persons in closed psychiatric establishments or services did allow the placement of such offenders. But placement in such cases was aimed only at treating the patient and failed to deal with the seriousness of the offence which he or she had committed. The judicial authority was therefore deprived of all control over the duration of the placement and it was for the doctors alone to decide when the patient would be discharged.

83. The Act of 8 August 2000 thus amended the title of Book I, chapter VIII, of the Penal Code to read: "Grounds for justification, irresponsibility or mitigation of responsibility, and excuse" and replaces the text of article 71 by the following:

> "Article 71. A person who, at the time of the offence, was suffering from a mental disturbance which caused him or her to lose discernment or control over his or her acts shall not be held criminally responsible.
>
> When examining magistrates or trial courts find that an accused is not criminally responsible within the meaning of the preceding paragraph and when the mental disturbance which has caused the accused to lose discernment or control over his or her acts persists, they shall, by the same decision, order the accused to be placed in an establishment or service authorized by law to receive persons subject to a placement measure to the extent that the accused still constitutes a danger to himself or others. Examining magistrates or trial courts may, if necessary, assign a lawyer to an accused who has not chosen one himself.
>
> A placement decision may be appealed or contested in the form and time provided for in the Code of Pre-Trial Proceedings. However, the placement measure will continue to be in effect even when an appeal has been filed against the decision which ordered it."

84. The Act also added the following two new articles to the Penal Code, following article 71:

> "Article 71-1. An individual who, at the time of the offence, was suffering from a mental disturbance which altered his or her discernment or impeded control over his or her acts remains punishable; however, the court shall take this circumstance into account in determining the penalty.
>
> Article 71-2. A person who has acted in the grip of an irresistible force or constraint shall not be held criminally responsible."

85. For offenders showing signs of mental disturbance, either in pre-trial detention or while serving their prison sentence after a final conviction, the applicable legislation is the Act of 27 July 1997 relating to the reorganization of the prison administration (article 9: establishment of a special medical section within the Luxembourg prison for drug-addicted and mentally disturbed detainees).

86. The new Act has also adapted some provisions of the Act of 26 May 1988 relating to the placement of mentally disturbed persons in closed psychiatric establishments or services, which did not provide for the possibility of judicial placement, and added a new chapter on persons under judicial supervision.

87. As indicated by the statistics contained in the annex to this report, a large number of inmates in Luxembourg prisons have been imprisoned for violations of the legislation to combat drugs and drug addiction. It has been found that many detainees continue to suffer from drug addiction, even after imprisonment. Consequently, the Minister of Justice has requested that overall plans should be prepared and implemented to care for drug-dependent persons in prisons. A brief report on the objectives and status of the plans is also contained in the annex.

88. In view of the substantial increase in suicides at Luxembourg prison in Schrassig (see annex for statistics), the Government requested two French experts to conduct an appraisal of general conditions of accommodation, care, observation and monitoring of detainees and to analyse the means used to provide medical care and psychological supervision for detainees, especially those displaying suicidal behaviour. On the basis of the experts' proposals and recommendations, the prison administration has taken the necessary steps to reduce the suicide risk in prisons to the fullest extent possible. A copy of the experts' report is contained in the annex to this report.

PART II

INFORMATION REQUESTED BY THE COMMITTEE

89. Representatives of the Luxembourg Government submitted Luxembourg's second periodic report to the Committee against Torture on 6 May 1999. On that occasion, the Committee requested additional information, with which it was provided orally by the members of the delegation of Luxembourg, supported by a written note. It therefore does not appear necessary to reproduce that information in the present report.

PART III

INFORMATION ON MEASURES TAKEN TO GIVE EFFECT TO THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

90. This part relates to developments in the subjects of concern referred to by the Committee during its consideration of Luxembourg's latest report, on 6 May 1999.

91. The information contained in part III of this report should be read in the light of the content of parts I and II and of past reports of the Grand Duchy of Luxembourg.

A. Subjects of concern

92. When it considered the second periodic report of Luxembourg, the Committee expressed the following concerns:

(a) The excessive length and frequent use of strict solitary confinement of detainees and the fact that this disciplinary measure may not be the subject of appeal;

(b) The situation of young offenders held in Luxembourg prison;

(c) The disciplinary regime imposed on minors held in the Socio-Educational Centres;

(d) The fact that the report did not cover all articles of the Convention, particularly articles 11, 14 and 16.

Subparagraph (a)

93. Since the submission of Luxembourg's second periodic report to the Committee against Torture, the Chamber of Deputies adopted the Act of 8 August 2000 amending: (a) certain provisions of the Sale of Medicinal Substances and Drug Addiction Control Act (amended) of 19 February 1973; (b) the Act of 26 July 1986 on certain modes of enforcement of custodial sentences.

94. Based on the recommendations of the Committee against Torture and the European Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment, the Act of 8 August 2000 was adopted, supplementing the Act of 26 July 1986 on certain modes of enforcement of custodial sentences, in order to guarantee detainees the possibility of appealing a decision ordering their placement in strict solitary confinement, either as a disciplinary measure or because they are reputed to be dangerous.

95. An appeal may be filed merely by addressing a letter to the prison commission provided for in article 12 of the above-mentioned Act of 26 July 1986. The commission must issue a reasoned decision on the appeal within 15 days of the day on which it was filed.

96. Action is also being taken to ensure that the period of solitary confinement for disciplinary reasons does not exceed one month.

97. Solitary confinement in the two State Socio-Educational Centres (CSEEs) is governed by the Grand Ducal regulations of 9 September 1992 relating to security and discipline in the CSEEs (chap. II, art. 11).

98. The above-mentioned article 11 stipulates, inter alia, that a doctor must examine a detainee in temporary solitary confinement within 24 hours of the commencement of the confinement and that confinement must be suspended if the doctor finds that it is liable to jeopardize the minor's physical or mental health.

99. Young people undergoing solitary confinement have the possibility of appeal to the juvenile court judge, the chairman of the Supervision and Coordination Commission or the doctor. Psychologists from the Centres' psychological/social service interview the young people in question systematically and immediately after solitary confinement is imposed and their opinion is taken into account by senior CSEE staff.

100. Since the establishment of a single administrative structure for the two Centres in January 1999, disciplinary measures have been harmonized.

Subparagraph (b)

101. Copies of the report of the Psychological-Socio-Educational Service (SPSE), which was set up in Luxembourg prison (CPL) in 1999, concerning the supervision of minors in the prison, together with a memorandum (Dienstvorschrift) by the prison governor of 12 January 2000, are transmitted to the Committee against Torture as an annex to the present report.

102. The content of the memorandum, which is in German, may be summarized as follows:

(i) The strict separation of detained minors and detained adults is enforced as a matter of principle;

(ii) Every minor is placed in an individual cell;

(iii) Every minor has the right of access to a lawyer. The instructor ensures that a form requesting the assistance of a lawyer is completed by every detained minor and sent to the president of the competent bar association;

(iv) The minor is informed of the prison regulations;

(v) Any mail sent to or by a minor must be submitted to the juvenile court judge, with the exception of mail between the minor and his counsel and mail sent by the minor to the Head of State, the Government, the Chamber of Deputies, the Minister of Justice or the Public Prosecutor, which must remain sealed;

(vi) Visiting permits are issued by the juvenile court judge. Visits always take place in private. Visiting hours are not limited;

(vii) Subject to prior authorization by the juvenile court judge, the minor has the right, during his leisure hours, to make telephone calls to three people of his choice on two occasions for up to 10 minutes in every week. This limitation does not apply to telephone conversations with lawyers or social workers;

(viii) The CPL administration decides whether personal belongings should be returned to the minor (e.g. wristwatches, decorative small chains);

(ix) Purchases for the minor, totalling up to Lux F 2,500 a week, are made when ordered;

(x) If the minor wishes to send money to a member of his family, he must submit an appropriate request to the CPL administration;

(xi) Minors are allowed to have one television set/playstation of their own or made available by the CPL and to use it during their leisure hours after 5 p.m. (not at night between the hours of 10.30 p.m. and 7 a.m.), provided that they participate in scheduled group activities (school, sports, educational activities). In this connection, they may submit requests to the administration;

(xii) During leisure hours, up to three minors may meet in a cell;

(xiii) Unless decided otherwise by the juvenile court judge, a minor entering the CPL may, after being examined by a doctor, immediately participate in group activities (sports, classes, educational activities, walking in the prison yard, leisure activities);

(xiv) In order to be eligible for rewards, minors must take an active part in scheduled group activities;

(xv) Under the disciplinary regulations, minors must be dressed when breakfast is served and their cells must be tidy. If they are untidy, they may be banned from sport and leisure activities that day and the matter is reported to the administration;

(xvi) If a minor's conduct during a group activity is unsatisfactory, the matter is reported to the administration and the minor is excluded from group activities for a period to be determined by the administration;

(xvii) A minor who has participated in the activities scheduled for the week and has behaved well will, as a reward, be authorized to engage in a sporting activity on one Saturday out of four from 1.15 p.m. to 3.30 p.m., under the supervision of the instructor, and to visit the lounge on Wednesdays during leisure hours from 5.30 p.m. to 7.30 p.m.

103. A statistical survey showing the number of minors placed in the CPL during the period from 1 January 1999 to 31 August 2000 is also annexed to this report.

Subparagraph (c)

104. General statistics for the reference year 1999 are given below:

Total minors admitted:

CSEE-Dreiborn: 122, including 30 new admissions;

CSEE-Schrassig: 90, including 24 new admissions.

Days present:

CSEE-Dreiborn: 7,628

CSEE-Schrassig: 5,657

Total in CSEEs: 13,285.

105. Statistics relating to exceptional disciplinary measures taken pursuant to the Grand Ducal regulations of 9 September 1992 relating to security and discipline in the CSEEs are given below:

Closed units:

CSEE-Dreiborn: 700 days, i.e. 9.18 per cent in relation to occupancy rate.

Number of detainees concerned: 57.

CSEE-Schrassig: 235 days, i.e. 4.15 per cent in relation to occupancy rate.

Number of detainees concerned: 37.

Transfers to the CPL:

CSEE-Dreiborn: 2,289 days, involving 16 detainees.

CSEE-Schrassig: 245 days involving 7 detainees.

106. The infrastructure at the CSEEs has been partially renovated: six cells (measuring 4.10 m x 2 m) with washbasin and toilet, shower and living area; at Dreiborn, open-air area between cells; new ventilation system and intercoms installed.

107. Solitary confinement in a CSEE constitutes an exceptional disciplinary measure which may be imposed only with the specific authorization of the governor or his deputy. The duration of such confinement may not exceed 20 days. Confinement in excess of 10 consecutive days must be reviewed by the governor, who, for this purpose, will consult the doctor, the judge who issued the placement order and the chairman of the Supervision and Coordination Commission.

108. Within 24 hours of entry into a solitary confinement section, a minor must be examined by a doctor, who will attest to his capacity to undergo this measure.

109. If a detainee remains in solitary confinement for over 48 hours, the doctor will visit him again every two days until enforcement of the measure has been completed. He may order solitary confinement to be stopped at any time if he considers it prejudicial to the health of the detainee and may recommend that the detainee be taken to hospital.

110. The governor or his deputy will visit a detainee in solitary confinement in order to talk to him about the reasons for that measure. If solitary confinement exceeds 48 hours, the governor or his deputy will regularly visit the detainee concerned.

111. The instructors will monitor a minor in solitary confinement by means of regular visits at least three times a day and will ensure that he is able to take a shower every day, receive balanced meals and go outdoors for fresh air from time to time.

112. Psychological/social service staff monitor the psychological condition of a detainee in solitary confinement, listening to what he has to say and discussing his future plans with him. Schooling is guaranteed.

Subparagraph (d)

113. For information relating to the implementation of the articles of the Convention specifically referred to by the Committee against Torture, reference may be made to part I of this report (see part I above, "Information on new measures relating to the implementation of the Convention").

B. Follow-up to the recommendations made by the Committee against Torture

114. During its consideration of Luxembourg's second periodic report, the Committee made the following recommendations:

(a) Adopt legislation defining torture, in accordance with article 1 of the Convention, and consider any act of torture as a specific offence;

(b) Make legal provision for the possibility of an effective appeal against the most severe disciplinary measures imposed on detainees and reduce the severity of these measures;

(c) End as soon as possible the practice of placing young offenders, including minors, in prisons for adults;

(d) Ensure that the obligations arising from articles 11, 12, 14 and 15 of the Convention are duly respected;

(e) Submit its third and fourth periodic reports due on 28 October 1996 and 28 October 2000, respectively, by 28 October 2000 at the latest.

Subparagraph (a)

115. This has been done with the adoption of the Act of 24 April 2000 adapting internal law to the provisions of the Convention against Torture, ratified by the Act of 31 July 1987, which incorporated a new chapter V-1 in Book II of the Penal Code (arts. 260-1 to 260-4).

116. For further details, reference may be made to part I of this report (ibid., art. 2).

Subparagraph (b)

117. For further details, reference may be made to section A, subparagraph (a), above.

Subparagraph (c)

118. In its governmental statement of August 1999, the Government reiterated its commitment to build a secure unit for minors within the CSEEs and to provide the Dreiborn and Schrassig CSEEs with the qualified staff necessary for the proper performance of their task.

119. On 14 February 2000, the chairman of the Supervision and Coordination Commission, composed of representatives of the Ministry of the Family, the Ministry of Education and the Public Prosecutor and the Governor of the CSEEs submitted a precise schedule to the competent governmental agencies for the construction of a secure unit within CSEE-Dreiborn, at an estimated cost of approximately 5 million euros. The work should be undertaken in 2001 and will thus enable minors to be detained in a facility other than a prison for adults. As soon as the secure unit is ready, the current practice of occasionally placing minors in the CPL will be terminated.

Subparagraph (d)

120. For further details, reference may be made to part I, section I, of this report.

Subparagraph (e)

121. Does not apply.

Annex

LIST OF DOCUMENTS* TO WHICH REFERENCE IS MADE

1. Constitution of 17 October 1868 (amended).

2. Act of 8 August 2000 amending article 118 of the Constitution.

3. Extracts from the Penal Code.

4. Extracts from the Code of Pre-Trial Proceedings.

5. Foreign Criminals Extradition Act (amended) of 13 March 1870.

6. Act of 28 March 1972 (amended) relating to:

   (1) The entry and residence of aliens;

   (2) Medical examinations for aliens;

   (3) The use of foreign labour.

7. Act of 12 March 1984 (amended) relating to the compensation of certain victims of bodily injury resulting from an offence and the punishment of fraudulent insolvency.

8. Act of 26 July 1986 relating to certain modes of enforcement of custodial sentences.

9. Act of 26 May 1988 relating to the placement of mentally disturbed persons in closed psychiatric establishments or services.

10. Act of 1 September 1988 relating to the civil liability of the State and public communities.

11. Grand Ducal regulations (amended) of 24 March 1989 concerning the internal administration and regulations of prisons.

12. Grand Ducal regulations of 9 September 1992 relating to security and discipline in the CSEEs.

13. Act of 27 July 1997 relating to the reorganization of the prison administration.

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* These documents are available for consultation in the Office of the United Nations High Commissioner for Human Rights.

14. Act of 31 May 1999 establishing the Grand Ducal police force and the General Police Inspection Department and amending:

(a) The Code of Pre-Trial Proceedings;

(b) The Military Organization Act (amended) of 23 July 1952;

(c) The Act of 26 May 1954 (amended), regulating the pensions of State officials;

(d) The Act of 22 June 1963 (amended) establishing salary scales for State officials;

(e) The Act of 16 April 1979 (amended) relating to discipline in the civil service;

(f) The Act of 28 March 1972 (amended) relating to:

(i) The entry and residence of aliens;

(ii) Medical examinations for aliens;

(iii) The use of foreign labour;

(g) The Act of 28 March 1986 (amended) harmonizing conditions and procedures for advancement in the various branches of State administrative departments and services;

(h) The Act of 27 July 1992 (amended) relating to the participation of Luxembourg in peacekeeping operations in the context of international organizations.

15. Act of 31 May 1999 aimed at strengthening measures to combat trafficking in human beings and the sexual exploitation of children and amending the Penal Code and the Code of Pre-Trial Proceedings.

16. Act of 18 March 2000:

Establishing a temporary protection regime;

Amending the Act of 3 April 1996 (amended) establishing a procedure for the consideration of asylum applications;

and related parliamentary document No. 4572/5.

17. Act of 24 April 2000:

(1) Adapting internal law to the provisions of the Convention against Torture, ratified approved by the Act of 31 July 1987;

(2) Transposing certain recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(3) Amending certain provisions of the Penal Code and the Code of Pre-Trial Proceedings;

(4) Amending the Foreign Criminals Extradition Act (amended) of 13 March 1870;

(5) Amending the Act of 28 March 1972 (amended) relating to:

1. The entry and residence of aliens;

2. Medical examinations for aliens;

3. The use of foreign labour.

18. Act of 26 May 2000 relating to protection against sexual harassment in labour relations and amending various other laws.

19. Regulations of the Government in Council of 26 May 2000 establishing the Advisory Commission on Human Rights.

20. Act of 8 August 2000 amending:

(a) Book I, Chapter VIII of the Penal Code;

(b) Article 3 of the Code of Pre-Trial Proceedings;

(c) The Act of 26 May 1988 relating to the placement of mentally disturbed persons in closed psychiatric establishments or services; and

(d) The Act of 27 July 1997 relating to the reorganization of the prison administration.

21. Act of 8 August 2000 amending:

(a) Certain provisions of the Sale of Medicinal Substances and Drug Addiction Control Act (amended) of 19 February 1973;

(b) The Act of 16 July 1986 relating to certain modes of enforcement of custodial sentences.

22. Act of 8 August 2000 on International Judicial Assistance in Criminal Matters.

23. Act of 14 August 2000 approving the Statute of the International Criminal Court, done in Rome on 17 July 1998, and related parliamentary document No. 4502/1.

24. Statistical compilation concerning the period from 1 January 1999 to 31 August 2000 on:

Minors;

Detainees placed in strict solitary confinement;

Persons imprisoned (untried and convicted) for drug-related offences.

25. Report of the Psychological-Socio-Educational Service (SPSE), set up within Luxembourg prison (CPL) in 1999, concerning the supervision of minors in the CPL, and memorandum (Dienstvorschrift) by the governor of the CPL of 12 January 2000.

26. Report on overall plans for dealing with drug-dependent persons in prisons.

27. Report on possible methods of reducing the suicide risk in prisons to the fullest extent possible.

28. Report on the training of prison staff.

UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports due in 1996

Addendum

RUSSIAN FEDERATION*

[Original: Russian]
[5 December 2001]

* For the initial report of Russian Federation, see CAT/C/5/Add.11; for its consideration, see CAT/C/SR.28 and 29 and Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44), paras. 115-149.

For the second periodic report, see CAT/C/17/Add.15; for its consideration, see CAT/C/SR.264, 265 and 268 and Official Records of the General Assembly, Fifty-second session, Supplement No. 44 (A/52/44), paras. 31-43.

The information submitted by the Russian Federation in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in document HRI/CORE/1/Add.52/Rev.1.

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I. INTRODUCTION

1. This report is submitted under article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention) and was drafted in accordance with the general guidelines concerning the form and contents of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/14).

2. The report covers the period 1996-2000 and contains a description of developments since the submission of the second periodic report in 1996 (CAT/C/17/Add.15).

II. INFORMATION RELATING TO EACH ARTICLE OF PART I OF THE CONVENTION

Article 1

3. The reform and improvement of Russian law are being conducted in accordance with the constitutional principle of the primacy of human rights.

4. The Constitution of the Russian Federation provides that "No one shall be subjected to torture, violence or other cruel or degrading treatment or punishment" (art. 21).

5. Article 15, paragraph 4, of the Russian Constitution provides that universally recognized principles and norms of international law and international agreements of the Russian Federation form an integral part of the country's legal system. Being constitutional, they have direct effect and are applicable throughout the Federation.

6. Article 15 of the Constitution was amplified by the adoption on 23 October 1996 of the Judicial System of the Russian Federation Act, which provides that uniformity of the judicial system - one of the guarantees of genuine justice - is ensured by, inter alia, "the application by all courts of the Constitution of the Russian Federation, constitutional Acts, universally recognized principles and norms of international law and international agreements of the Russian Federation".

7. The Criminal Code of the Russian Federation (CCRF) also refers to universally recognized principles and norms of international law as a source of a number of provisions on criminal liability (CCRF, art. 1, para. 2).

8. The CCRF contains a number of articles prescribing criminal liability for any type of unlawful act involving physical or psychological abuse of human beings. Russian criminal law contains no definition as such of the concept of "torture". The term "torture" does, however, appear in a number of articles. In such a case, the law-enforcement agent bases himself on the definition of the concept of "torture" contained in the Convention.

Article 2

9. The new CCRF came into effect on 1 January 1997, i.e. subsequent to the consideration in November 1996 of the second periodic report of the Russian Federation on compliance with the Convention.

10. The CCRF contains the concept of "torture" as an aggravating circumstance in the crimes referred to in article 117 (Systematic or brutal violence), paragraph 2 (e), and article 302 (Coercion to give testimony), paragraph 2. Article 302, paragraph 2, was included in the CCRF in connection with the ratification of the Convention and with article 15, paragraph 4, of the Constitution, pursuant to which "universally recognized principles and norms of international law and international agreements of the Russian Federation form an integral part of the country's legal system".

11. It should be noted that the CCRF provides for criminal liability not only in the event of an official's use of torture to compel someone to testify (op. cit., art. 302, para. 2) but also in the event of torture in a domestic context (art. 117, para. 2 (e)). Hence, on the one hand Russian criminal law is based on the Convention's definition of the term "torture" and on the other, in application of the possibility contained in article 1, paragraph 2, of the Convention, it expands that definition by extending it to all subjects of criminal law, thereby ensuring fuller protection of human rights.

12. The CCRF contains a number of other rules aimed at further implementation of the provisions of the Convention, for example, incitement to suicide through harsh treatment or systematic degradation (art. 110), deliberate infliction of serious injury to health through particular cruelty, bullying or ill-treatment (art. 111, para. 2 (b)), battery (art. 116), kidnapping (art. 126), unlawful deprivation of liberty (art. 127), unlawful internment in a psychiatric hospital (art. 128), hostage-taking (art. 206), abuse of official powers (art. 285), violation, involving humiliation, degradation or violence, of the armed forces' regulations on relations between military personnel who are not hierarchically distinct (art. 335). All in all, quite severe penalties are provided for all these crimes.

13. Among the principles of the CCRF that reflect international standards and are of particular importance in practical law-enforcement is humanity (CCRF, art. 7). Humanity manifests itself in the combination of two factors: the safeguarding of people from crimes against their lives, health, dignity, rights and freedoms or property (art. 7, para. 1), and the stipulation that punishment and other measures under criminal law may not have as their purpose the causing of physical suffering or the degradation of the individual (ibid., para. 2). Article 7, paragraph 2, of the CCRF prohibits punishment that is cruel, painful or degrading.

14. The principle of humanity has been incorporated in a number of articles of the CCRF. It has further been manifested in the establishment by the State, as required by article 4 of the Convention, of criminal liability for the use of torture.

15. In addition to the entry into force of the CCRF, the Russian Federation is pursuing legislative activity aimed at the adoption of regulations to make Russian law an effective instrument for the discharge of the obligations assumed under the Convention. In addition, it is amending and supplementing a variety of existing laws and subordinate legislation, while other instruments have been repealed.

16. The Court Bailiffs Act was adopted in 1997. In giving these officials wide powers to maintain order in courts, it strictly regulates the conditions and limits of the use of force, special restraining devices and firearms. In particular, it prohibits the use of special restraining devices against persons who have committed unlawful acts of a non-violent nature and, except in cases of armed resistance or of the commission of a group or armed attack endangering human life, against women who are visibly pregnant, persons who clearly have a disability or minors (art. 15).

17. As redrafted, article 4 of the Detention of Suspects and Accused Persons Act (No. 117-FZ) sets out the principles for the detention of such persons. Those principles include: observance of the law; the equality of all citizens before the law; humanity; respect for the dignity of the individual in accordance with the Constitution of the Russian Federation, the principles and norms of international law and international agreements of the Russian Federation. The article also says that detention "shall not be accompanied by torture or other acts intended to cause physical or mental suffering to suspects or accused persons who are under detention".

18. The Police Act of the RSFSR (Amendment and Supplementation) Act was adopted on 31 March 1999. The changes introduced include in particular the insertion in article 5, paragraph 2, of the Police Act of the following provision: "The police shall not have recourse to torture, violence or other cruel or degrading treatment."

19. In its decision No. 1, "On judicial practice in murder cases (CCRF, art. 105)", dated 27 January 1999, the Plenum of the Supreme Court of the Russian Federation stated that the factor of particular cruelty referred to in the qualification of murder under CCRF, article 105, paragraph 2 (e), "is present, in particular, in cases in which, prior to the taking of the victim's life or in the course of the commission of the murder, use is made of torture or systematic or brutal violence or the victim is mocked, or in which the murder is committed by a means of which the culprit is aware that it will cause the victim particular suffering".

20. In one of its decisions, the United Nations Committee against Torture expressed concern that a number of presidential decrees permitting suspects to be detained for up to 30 days might create conditions conducive to the violation of detainees' rights. That problem has now been resolved. Presidential Decree No. 593 of 14 June 1997 repealed Presidential Decree No. 1226, dated 14 June 1994, entitled "Urgent measures to protect the population from banditry and other manifestations of organized crime", and section 2 of Decree No. 1025, dated 10 July 1996, entitled "Urgent measures to strengthen the law and order and to intensify the fight against crime in the city of Moscow". In 1997, the Constitutional Court of the Russian Federation recognized

as unconstitutional section 1, paragraph b, of the Temporary Exceptional Measures to Combat Crime Act of the Republic of Moldova, which had given the Republic's Ministry of Internal Affairs the right to hold in administrative detention for up to 30 days, subject to a procurator's consent, persons involved in the activity of organized criminal groups.

21. The Russian Federation is continuing to work actively for the conclusion of international agreements elaborating on the provisions of the Convention and aimed at improving interaction between CIS States regarding the prohibition of torture.

22. The Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms was concluded on 26 May 1995 and ratified at Minsk in 1998. Article 3 of the Convention reads as follows: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

23. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment came into force for Russia on 1 September 1998.

Article 3

24. In accordance with universally recognized principles and norms of international law, the provisions of international agreements and the Constitution of the Russian Federation, Russian penal legislation is based on strict observance of guarantees of protection against torture, violence and other cruel or degrading treatment of convicted persons (Code for the Execution of Criminal Penalties (CECP), art. 3, para. 3). These fundamental principles are observed throughout the territory of the Russian Federation (CECP, art. 6, para. 1).

25. People who have committed crimes are equal before the law and criminally liable irrespective of their sex, race, nationality, language, origin, property or official status or other circumstances. That is stated in article 4 of the Russian Criminal Code.

26. It is particularly emphasized in the Criminal Code that neither punishment nor other measures under criminal law may have as their purpose the causing of physical suffering or the degradation of the individual.

27. Implementation of the above-mentioned legal rules is the basis of all the Russian Federation's international agreements regulating expulsion, return or extradition of persons to another State when there are grounds for thinking that they will be at risk of being tortured there. That is borne in mind by the Russian law-enforcement agencies that deal with such matters.

28. In assuming on 25 October 1999 obligations under the European Convention on Extradition, the Russian Federation entered a reservation to the effect that it reserved its right to refuse extradition "if there are serious grounds to believe that the person whose extradition is requested was or will be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment" (European Convention on Extradition, Additional Protocol and Second Additional Protocol Thereto (Ratification) Act, art. 1, para. (b) (2)).

29. The Russian Federation has concluded bilateral extradition agreements with the People's Republic of China and India; they came into force on 10 January 1997 and 30 May 2000 respectively. Both these agreements contain a provision (art. 20) stating that they are without effect on the contracting countries' rights and obligations under other international treaties to which they are parties. Article 4 (2) of the Extradition Treaty with India contains a provision on extraterritorial jurisdiction, the need for which was mentioned in the conclusions and recommendations of the Committee against Torture. In addition, article 14 of the same Treaty provides that extradition may be refused if the offence for which extradition is requested is punishable by death under the law of the requesting State but not under that of the requested State. Hence, these agreements do not prevent the discharge by Russia of its obligation under article 3 of the Convention.

30. Similar agreements on the handing-over of persons sentenced to deprivation of liberty to serve their sentences have been concluded with Turkmenistan (1995), Georgia (1996), Cyprus (1996), Madagascar (1997) and Tunisia (1987).

Article 4

31. The CCRF contains a number of articles according to which the use of torture is an indicium of an offence. These legal rules were formulated taking into account the differences between the author and victim of an offence.

32. For example, article 117, paragraph 2 (e), of the CCRF determines liability for "systematic or brutal violence" (the causing of physical or psychological suffering through the systematic administration of blows or other violent acts) that is committed with the use of torture; article 302, paragraph 2, determines liability for coercion of a suspect, accused person, victim or witness to testify or of an expert to give a conclusion through violence, bullying or torture; article 309 determines liability for suborning or compelling a person to give or refrain from giving testimony or to mistranslate when those offences are committed with the use of life- or health-threatening violence. Likewise, articles 285 and 286 determine officials' liability for abuse or exceeding of their powers that has serious consequences.

33. The use of torture is viewed with regard to these offences as a circumstance justifying an increase in the penalty. For example, the applicable penalties are: for systematic or brutal violence committed with the use of torture - deprivation of liberty for a period of 3 to 7 years (CCRF, art. 117, para. 2 (e)); coercion to give testimony, combined with the use of violence, bullying or torture - deprivation of liberty for a period of 2 to 8 years (art. 302, para. 2); exceeding of official powers, when accompanied by violence or threats of violence or the use of a weapon or special restraining devices or resulting in serious consequences - deprivation of liberty for 3 to 10 years (art. 286).

34. It must be emphasized that liability under paragraph 1 of article 117 of the CCRF (causing of physical or psychological suffering through the systematic administration of blows or other violent acts) arises in the absence of consequences in the form of the deliberate infliction of serious or moderate damage to health.

35. When such consequences do arise, and in other cases of the commission of a crime with recourse to torture (when there is no direct reference to that circumstance in the article in question), liability is incurred for the set of offences concerned and the sentence is fixed in accordance with article 69 of the CCRF by partially or completely summing the penalties applicable to the individual crimes (in which instance the maximum period of deprivation of liberty may be as long as 25 years). In other words, liability is greatly increased for any crime involving the use of torture.

36. In the light of the foregoing, we are of the opinion that designating torture as a general aggravating circumstance would not strengthen but, on the contrary, weaken individuals' protection under criminal law since the sentence that could be imposed for what would then be a single crime would be milder (punishment only being possible within the limits of the specific article concerned) than that imposable for a set of crimes, i.e. according to the rules in article 69 of the CCRF. It should also be borne in mind that article 63, paragraph 2, of the CCRF provides that if an aggravating circumstance (in this instance, torture) is recognized as an indicium of a crime in any article contained in the Special Part of the CCRF, it cannot be taken into account a second time in sentencing.

37. The CCRF also determines liability for: the prosecution of a party known to be innocent (art. 299); unlawful short-term or pre-trial detention having serious consequences (art. 301, para. 3); falsification of evidence that results in serious consequences (art. 303, para. 3); utterance of a knowingly unjust verdict, decision or other judicial instrument (art. 305); violent suborning or coercion to give or not to give testimony or to give an inaccurate translation (art. 309, paras. 3 and 4).

38. Article 203 of the CCRF determines the criminal liability of chiefs or officials of private security or detective services who, in exceeding their powers, use or threaten to use violence.

39. In examining the question of criminal prosecution of officials (including officials of law-enforcement and judicial organs), it should be borne in mind that article 286 of the CCRF penalizes action that is ultra vires. It is of relevance in this regard whether the act is committed with violence or the threat of violence or has serious consequences. When those circumstances obtain, the offence counts under Russian criminal law as a serious one and is punishable by deprivation of liberty for 3-10 years, combined with a ban on occupancy of the post or performance of the official functions in question for up to 3 years.

40. The summary data on numbers of convictions provided by the Office of the Procurator-General of the Russian Federation's statistical department reveals the following:

Number of convictions	1996	1998	1999
Under CCRF, art. 286 (Action ultra vires)	895	989	1 149
Under CCRF, art. 301 (Unlawful short-term or pre-trial detention)	5	4	18
Under CCRF, art. 302 (Coercion to give evidence under torture)	8	11	7
Under CCRF, art. 128 (Unlawful internment in a psychiatric hospital)	-	16	5

41. Within the system of the Russian Ministry of Internal Affairs, supervision of officials' compliance with the law is exercised by the heads of internal affairs agencies, the agencies' security units and the staff inspectorate.

42. The security units' main functions are:

(a) To detect, prevent and suppress breaches of the law planned, prepared or committed by officials of internal affairs agencies of the Russian Federation;

(b) To work out measures for ensuring security and strengthening compliance with the law in internal affairs agencies and units;

(c) To organize State protection of officials of internal affairs agencies and of members of their families;

(d) To make internal investigations into serious crimes and crimes that have provoked wide public reaction committed by officials of internal affairs agencies, as well as into professional misconduct involving law-breaking.

43. Among the forms of official response to violation of citizens' rights by officials is the examination of complaints and other types of communication.

44. During the period 1998-2000, internal affairs agencies' security units received 78,219 complaints and communications from citizens against the actions of employees of the agencies. The citizens' submissions led to the making of 44,839 internal investigations and, as a result of the investigations, the calling to various forms of account of 17,193 agency employees. Of these employees, 4,598 were dismissed and 1,134 demoted. A total of 10,374 files were submitted to the procurator's service and criminal proceedings were opened in 5,093 of these cases.

45. In addition to these efforts, the Ministry of Internal Affairs is developing a programme for a multilevel study of employees' suitability for service in internal affairs agencies.

46. The United Nations Committee against Torture has expressed concern in one of its decisions that new recruits to the Russian armed forces are harshly treated by serving personnel.

47. Breaches of the regulations on personal relations and physical abuse of subordinates unfortunately continue to be serious problems in Russia's Armed Forces and other military units.

48. The CCRF provides for liability for: violations involving humiliation, degradation or bullying of, or violence against the victim of the armed forces' regulations on relations between hierarchically equal personnel (op. cit., art. 335), and the insulting of one member of the armed forces by another during or in connection with the discharge of military duties (art. 336).

49. With a view to the detailed study of the problem of non-regulation behaviour within the armed forces, the Office of the Chief Military Procurator has, together with the Office of the Procurator-General of the Russian Federation's institute for research into the consolidation of

law and order, made a sociological study of latent criminality and its contributory factors. Analysis of compliance with the law in the Army and Navy has shown that the persistence of misconduct is closely connected with other negative phenomena: evasion of military service, commanders' covering-up of offences, and breaches of the law in calling people up for military service.

50. A systematic approach has been adopted towards resolving the problem of crime. It has resulted in the development of new forms of surveillance enabling crime to be dealt with pro-actively. These include the universal introduction in detachments and units of regular, large-scale procuratorial checks constituting the first stage in a system of measures aimed at increasing the efficiency of the legal system's reaction to misconduct.

51. In 1997, checks of this kind resulted in the recording of 712 cases of breach of the regulations on personal relations (as against 762 in 1996) and of 170 cases of abuse of authority involving physical abuse. Appropriate measures were taken against the guilty parties. In 1997 alone, criminal proceedings were opened in 88 cases and resulted in the conviction by military courts of 46 members of the armed forces. In the current year, there have been 29 checks, resulting in the opening of 128 criminal cases, including 51 for breach of the regulations on personal relations and 77 for evasion of military service; 248 instances of concealment of offences have been formally registered, 9 unlawful decisions not to open criminal proceedings have been repealed and 54 recommendations for preventing offences have been made to senior officers.

52. In 1998, as part of its systematic offensive against misconduct and evasion of duty, the Chief Military Procurator's Office made a nationwide appeal to deserters voluntarily to contact the authorities. From the very beginning of this "Operation Confession", confirmation was obtained that most deserters evaded military service because of difficult personal circumstances, including problems resulting from non-regulation conduct by others.

53. The Chief Military Procurator's Office proposed that they should be amnestied and on 10 June 1998 the State Duma of the Federal Assembly of the Russian Federation formally decided that that should be done. Over 11,000 military personnel made confessions and the majority of them were released from criminal liability.

54. Simultaneously, checks were made on compliance with the law in calling citizens up for military service, since experience of procuratorial investigations had shown that enrolling people with mental or physical handicaps contributes towards not only breaches of the military's regulations on personal relations but also other serious offences involving in particular shootings on guard duty and suicides. As a result of these checks, which were conducted in concert with local procurators throughout the Russian Federation during the 1998 spring and autumn call-ups, the decisions of call-up boards concerning 850 people who were either medically unfit for, or otherwise exempt from military service were overturned. In 1999, unlawful call-up was prevented in over 1,300 individual cases. Following procuratorial supervision of compliance with the law during the spring 2000 call-up campaign, more than 260 procuratorial recommendations and 280 reports on violations were made to the competent authorities. In August 2000, at a coordination meeting of heads of military units and law-enforcement agencies

held at the Chief Military Procurator's Office with a view to preventing the call-up of persons unfit for military service, decision was taken to initiate appropriate changes in the Military Obligations and Military Service Act.

55. The novelty of the approach being taken to ensuring the rights of military personnel is further apparent from the fact that the campaign against misconduct is now being seen in close conjunction with the task of tak.ng practical steps to provide genuine protection for the victims of unlawful acts. In March 1999, a meeting of senior officials from the Chief Military Procurator's Office mapped out a plan for moving this issue from the realm of theory to that of practice. In implementation of this plan, drafts have been elaborated of: instructions on measures to ensure the safety of military personnel who contribute towards criminal justice and the protection of the rights and lawful interests of victims of unlawful acts; a Ministry of Defence order for the application of those instructions. Proposals have been submitted to the Russian Government and the State Duma for the adoption of relevant federal laws and the amendment and supplementing of the Code of Criminal Procedure of the Russian Socialist Federal Soviet Republic (RSFSR).

56. Since the causes of "hazing" cannot be eliminated without the full pooling of the efforts of the command structure, the Military Procurator's Office, government bodies and voluntary and human-rights organizations, the Chief Military Procurator's Office is doing a great deal to improve coordination between these entities and to give greater publicity to the checks and other supervisory measures. On 28 February 2000, an interdepartmental task force on matters to do with non-regulation behaviour and related evasion of military service was set up under its leadership. It comprises representatives of all sections of the Russian federal authorities that include military units. The task force is responsible for the permanent coordination of the day-to-day activity of all the departments concerned.

57. On 22 December 1998, a round-table meeting was held at the offices of the Chief Military Procurator. It was attended by representatives of the Ministry of Defence, associations of service personnel's relatives and the mass media and was devoted to the intensification of joint efforts to eradicate the negative phenomena in question. The experience gained from this meeting was used in organizing a conference held at the same venue on 24 December 1999 on improving the work of military commanders and the Military Procurator's Office to prevent death and injury to military personnel from causes including unlawful acts by commanders and officers. It is planned to hold in December 2000, again at the offices of the Chief Military Procurator, a conference to be attended by representatives of voluntary associations in the federal armed forces, other forces and military formations, of human-rights bodies and of the mass media. It will discuss the improvement of interaction in the interests of maintaining law and order and discipline in military units.

58. Coordination meetings at the offices of the Chief Military Procurator between the heads of ministries and government departments having military formations are now a part of law-enforcement practice. The decisions taken at these meetings are materialized in measures intended to have a comprehensive effect on the causes and conditions that give rise to breaches of the regulations governing relations between service personnel.

59. Interdepartmental task forces on combating non-regulation behaviour and evasion of military service operate in both the Chief and local military procurators' offices.

60. The coordination activity includes the study, pooling and dissemination of the experience of commanders of military units having a long history of freedom from non-regulation behaviour.

61. Military procurators have made arrangements for conscripts to have their rights to protection against unlawful acts by fellow service personnel or officials explained to them at military commissariats and call-up centres.

62. Confidential telephone hotlines have been set up in the offices of the Chief and local military procurators to ensure prompt reaction to evidence of non-regulation behaviour and other offences.

63. On 26 June 2000, the Deputy Procurator-General of the Russian Federation and the Chief Military Procurator issued Order No. 192 on reinforcement of supervision of compliance with the law in criminal investigations into cases of death or injury of military personnel. The Office of the Chief Military Procurator now includes a subunit that deals exclusively with supervision of compliance with the law in investigations into non-regulation behaviour.

64. The above measures are proving effective not just in curbing the steady increase of recent years in such behaviour, but also in substantially reducing the frequency of its occurrence. For example, while incidents of this kind increased in 1997 and 1998 by 24 per cent and 10 per cent respectively, in 1999, the number of breaches of service regulations on personal relations recorded by military procurators fell by 12.2 per cent, the first decline in five years. The number of persons who committed offences of this kind dropped by 10.9 per cent.

65. Over 4,800 procuratorial checks were carried out during the period January-June 2000. They revealed more than 6,300 breaches of the law and resulted in the restoration of the rights of 35,000 members of the armed forces.

66. Active use is made of criminal proceedings in combating breaches of the regulations on personal relations. Cases against 1,164 members of the armed forces found committing this type of offence were sent to the courts between January and June 2000. More than 400 officials are being prosecuted for physical abuse of subordinates.

67. The outcome of these efforts has been a decline of 0.9 per cent in the number of breaches of service regulations on personal relations recorded in the first half of the current year. The number of victims of such breaches and of physical abuse has fallen by 38.7 per cent.

68. However, the upward trend in the number of in-service offences involving physical abuse has not been halted. By comparison with the same period of 1999, the number of such incidents rose by 14.7 per cent.

Article 5

69. Under article 11 of the CCRF, all persons who commit offences in the territory of the Russian Federation are liable for their actions under Russian law. Unlike article 4 of the RSFSR Criminal Code, the provisions of this article spell out in greater detail the circumstances in which an offence is deemed to have been committed in the territory of the Russian Federation.

70. The criminal liability of diplomatic representatives of foreign States and other beneficiaries of immunity who commit offences in the territory of the Russian Federation is determined in accordance with the norms of international law (art. 11, para. 4).

71. Under article 12, paragraph 3, of the CCRF, foreign citizens and stateless persons not permanently resident in the Russian Federation who commit offences outside its borders are criminally liable if their crime is directed against the interests of the Russian Federation; in cases provided for by an international treaty of the Russian Federation.

Article 6

72. The criminal prosecution of persons who commit offences such as those indicated in article 4 of the Convention is conducted in strict accordance with the rules of the law of criminal procedure. Such persons may be held in pre-trial detention only on the basis of the requirements of article 96 of the RSFSR Code of Criminal Procedure. When authorizing pre-trial detention, the Procurator must acquaint himself thoroughly with all the records of a case and, if necessary, personally interview the suspect or the accused. The prolongation of pre-trial detention beyond the statutory limit is permitted only when it is not possible to complete the investigation and when there are no grounds for modifying the preventive measure. Upon expiry of the statutory limit for pre-trial detention (i e. six months in criminal cases if it is not possible to complete the investigation and when the individual concerned has committed a serious or particularly serious offence; or, exceptionally, one year if authorized by the Deputy Procurator-General or 18 months if authorized by the Procurator-General), the suspect or the accused must be released from the place of detention as stipulated in article 97 of the RSFSR Code of Criminal Procedure.

Article 7

73. If a person suspected of having committed an offence under article 4 of the Convention is not extradited to the State party in whose territory the offence was committed, the decision to prosecute shall be taken in accordance with the law of the Russian Federation. The procedures governing legal proceedings that are laid down in the RSFSR Code of Criminal Procedure are uniform and mandatory for all cases and for all courts, procuratorial bodies, and pretrial investigations and initial inquiries (RSFSR Code of Criminal Procedure, art. 1).

Article 8

74. The Russian Federation applies the following criteria when deciding matters of extradition.

75. When it ratified the 1957 European Convention on Extradition, the Russian Federation entered a reservation concerning the possible refusal of extradition "if there exist serious grounds to believe that the person whose extradition is requested was or will be subjected in the requesting State to torture or other cruel, inhuman or degrading treatment or punishment" (European Convention on Extradition, Additional Protocol and Second Additional Protocol Thereto (Ratification) Act, art. 1, para. 1 (b)).

76. In the light of this reservation and the obligations devolving on the Russian Federation under article 3 of the Convention, the Office of the Procurator-General of the Russian Federation, upon receipt of an extradition request, ascertains the general political situation in the requesting State, which may give some clue as to whether the person facing extradition might subsequently be tortured.

77. In accordance with article 11 of the 1957 European Convention on Extradition, which was ratified by the Russian Federation on 25 October 1999, extradition may be refused if the offence referred to in the extradition request is a capital crime in the requesting Party, whereas the requested Party does not provide for or apply this form of punishment.

78. In the light of this provision of the Convention and the commitment to abolish the death penalty which the Russian Federation assumed when it became a member of the Council of Europe, and pursuant to its moratorium on this form of punishment, the Procurator-General's Office, when deciding on extradition cases involving offences which are not capital crimes under Russian law but which fall into this category under the law of the requesting State, seeks assurances from the latter that the person facing extradition will not subsequently be put to death.

79. It should be noted that most persons who have committed serious crimes are extradited at the request of Ukraine and Azerbaijan, both of which have declared a moratorium on the use of the death penalty.

80. Extradition statistics reveal that, in the period from 1997 to June 2000 inclusive, the Procurator-General's Office granted 3,444 applications to extradite for the purpose of criminal prosecution or to ensure execution of a sentence. Extraditions were made to CIS countries, the Baltic States, the Czech Republic, Germany, Bulgaria, China and Mongolia.

81. In all, 1,729 extradition requests were turned down during the same period. The grounds for refusing extradition were as follows: the person claimed was a Russian citizen; the act referred to in the request was not punishable under Russian law; the prosecution was brought on political grounds, etc. In no case was the refusal to extradite motivated by the fact that the person claimed might be subjected to torture, cruelty or unauthorized investigative methods in the requesting State.

Article 9

82. Since the consideration in 1996 of the second periodic report of the Russian Federation regarding its compliance with the Convention, the Russian Government has concluded treaties

on judicial assistance and legal relations in civil and criminal cases with the following countries: the Islamic Republic of Iran (1997), Zaire (1997), Mexico (1997), Colombia (1997), Mozambique (1997), Mali (1997), Tunisia (1997), Madagascar (1997), Cuba (1997) and Egypt (1997).

83. In October 1999 the Russian Federation ratified the European Convention on Mutual Assistance in Criminal Matters (20 April 1959) and the Additional Protocol thereto, both of which it signed in Strasbourg on 7 November 1996.

84. Pursuant to this development, a section has been incorporated into the draft code of criminal procedure of the Russian Federation on procedures for cooperation between courts, procurators, investigators and bodies conducting initial inquiries, on the one hand, and the corresponding foreign agencies and officials, on the other, concerning judicial assistance in criminal cases, extradition of offenders, and extradition of convicted persons to serve their sentence in their home country.

Article 10

85. The Government of the Russian Federation attaches very high priority to education and information regarding the prohibition of torture. For example, efforts are being made to improve the quality of training for specialist personnel in the Russian penal correction system and familiarize them with the experience of west European penitentiary systems, including within the framework of the Joint Programme of the European Commission and the Council of Europe to improve human rights legislation, promote social cohesion and develop democracy in the Russian Federation. The Council of Europe and the European Commission have been implementing joint programmes for the Russian Federation since 1996. A fourth Joint Programme agreement was signed at the end of 1999. The main objectives of this programme are:

Cooperation in publicizing human rights issues;

Training of judges;

Development of the institution of human rights commissioner in the constituent entities of the Russian Federation;

Training of young parliamentarians and federal and regional officials.

86. Plans are also afoot to make better use of the media to raise the level of legal awareness among the population at large. These measures will be partially funded through an agreement with the World Bank that came into force in September 1996 whereby the Bank agreed to provide a loan to support legal reform in the Russian Federation.

87. The Russian Federation's international obligations regarding the prevention of torture are also reflected in the training modules "International Law" and "Safeguarding Human Rights in the Work of Internal Affairs Agencies" that are taught in educational establishments of the Ministry of Internal Affairs.

88. In its concluding observations, the United Nations Committee against Torture recommends expediting the training of medical personnel in penitentiaries as regards their legal obligations and the rights of suspects and detainees. According to information received from the Ministry of Justice's Central Department for Penal Correction, medical officers in penitentiaries attend classes twice a month on providing medical care to detainees and prisoners.

Article 11

89. Article 22 of the Constitution, which states that pre-trial detention or custody is only permitted pursuant to a judicial decision, guarantees respect for the law. Pending such a decision, no one may be detained for longer than 48 hours.

90. It should be noted, however, that under article 6 of section II (Final and Transitional Provisions) of the Constitution of the Russian Federation, "Until such time as the law on criminal procedure of the Russian Federation is brought into line with the provisions of this Constitution, the former procedure for the arrest, custody and detention of persons suspected of committing offences shall be retained", i.e. pending the adoption of a new Code of Criminal Procedure, procuratorial consent is required for a person to be held in pre-trial detention.

91. Article 14 of the Suspects and Accused Persons (Custody) Act (No. 103-FZ) of 15 July 1995 states that suspects and persons charged with offences may be held in custody for the period specified in the Code of Criminal Procedure. Under the law of criminal procedure of the Russian Federation, the legality and validity of the use of pre-trial detention as a preventive measure and the legality and validity of the prolongation of custody may be appealed in a court of law.

92. Presidential Decree No. 1226 of 14 June 1994 authorized the holding in custody for up to 30 days as a preventive measure of persons suspected of committing an offence as members of an organized criminal gang. This procedure was voided by a presidential decree of 14 June 1997.

93. The Code of Criminal Procedure and the Suspects and Accused Persons (Custody) Act, both of which came into force in 1997, provide for an extension of the rights of remand prisoners and convicted persons and envisage differentiated and humane arrangements for custody and the serving of sentences. The minimum cell area has been set at 4 m^2 per person; female suspects and accused are permitted to keep their children (up to age three) with them; and persons detained in remand units are entitled to additional amenities and health services on a paying basis.

94. According to the latest version of article 11 of the RSFSR Code of Criminal Procedure, the governor of a place of detention is authorized to order the release of a suspect or accused person upon expiry of the statutorily defined period of custody or pre-trial detention, provided no further decision has been made regarding selection of a preventive measure. Formerly only courts and procurators had this power. On 11 December 1996, significant amendments were made to article 97 (Duration of Custody) of the RSFSR Code of Criminal Procedure. The provision stating that the time taken by the accused and his counsel to familiarize themselves

with the case-file should not be included in the period spent in custody was removed, and the statutory limit and grounds for the prolongation of custody by a procurator or a judge were defined.

95. Moreover, by its ruling No. 167-0 of 25 December 1998, the Constitutional Court confirmed that any decision to prolong the custody of an accused person who has finished acquainting himself with his case-file is unconstitutional.

96. The principles of legality and humanism form part of the law on the execution of criminal penalties. This is amplified in article 4, paragraph 3, of the Code for the Execution of Criminal Penalties of the Russian Federation, where it is stated that Russian legislation for the execution of criminal penalties and its application must be based on strict observance of safeguards against torture, violence and other cruel or degrading treatment of prisoners.

97. In the Code for the Execution of Criminal Penalties, article 12 (Fundamental rights of convicted persons) stipulates that such persons are entitled to be treated courteously by the staff of the institution where the penalty is being executed. They may not be treated cruelly or in a degrading manner. The same article prohibits any medical or other experiments on convicted persons which might endanger their life and health, regardless of whether they have given their consent.

98. Pursuant to Presidential Decree No. 1100 on reforming the penal correction system of the Ministry of Internal Affairs (8 October 1997) and Decree No. 904 on the transfer of the penal correction system of the Ministry of Internal Affairs to the jurisdiction of the Ministry of Justice of the Russian Federation (28 July 1998), all institutions and agencies of the penal correction system are now under the authority of the Ministry of Justice. The Russian Federation has thus complied with the recommendations of the Committee of Ministers of the Council of Europe on standard European penitentiary rules.

99. The transfer of the penal correction system to the jurisdiction of the Ministry of Justice is a precondition for root and branch reform. A new draft outline for the reorganization of the penal correction system in the period to 2005 has been prepared. This envisages, inter alia:

(a) Policy adjustments in the fight against crime; further humanization of the criminal law and legislation dealing with criminal procedure and the execution of criminal penalties; expansion of the range of criminal penalties and preventive measures available as alternatives to imprisonment or custody;

(b) Establishment of conditions and procedures for the execution of penalties which ensure social and legal protection for convicted persons, suspects and accused persons and guarantee citizens' constitutional rights to personal safety, protection of health and property, and education.

100. To this end, a number of proposals have been submitted to the legislative and executive branches of Government with a view to amending and supplementing existing legislation. Government Decision No. 760 on measures to guarantee conditions for the custody of persons in remand units and prisons of the penal correction system of the

Ministry of Internal Affairs (27 June 1996) was prepared and adopted with input from the law-enforcement agencies. On 19 May 2000 the State Duma of the Federal Assembly adopted at first reading a bill to amend and supplement certain legislative acts of the Russian Federation pertaining to the penal correction system. The adoption of this statute should make it possible to cut by 250,000-300,000 the number of persons in pre-trial detention and improve accommodation and services for suspects and accused persons.

101. The Ministry of Justice has embarked on a policy of making institutions of the penal correction system transparent to international human-rights organizations. Delegations from the International Committee of the Red Cross (ICRC) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment are free to visit correctional institutions and remand prisons of the penal correction system.

102. Institutions of the penitentiary system are partially exempt from income tax, which will help to stimulate prison industries.

103. The checks by the Office of the Procurator-General of compliance with the law at places of detention, have uncovered numerous irregularities and led to the release of persons illegally detained in the following types of facility:

	1997	1998	1999	January-June 1999	January-June 2000
Special cells	-	993	577	271	279
Punishment cells	337	1 065	882	423	433
Punishment cells in remand prisons	-	145	150	75	68
Disciplinary units	994	12	15	8	8

104. The Constitutional Court has declared unconstitutional the decision to suspend payment of earned pension to convicted persons for the duration of their detention (since 1 July 1997 convicted persons serving a custodial sentence have enjoyed the same pension entitlements as everyone else). It has also declared unconstitutional the rules in the Housing Code whereby citizens forfeit the right to housing in the event of a conviction entailing a custodial sentence of more than six months.

105. On the recommendation of the President of the Russian Federation, the State Duma decided to proclaim an amnesty on 24 December 1997. This amnesty affected approximately 267,000 people and was an act of humanity on the part of the State with respect to certain categories of suspects, accused persons and criminals.

106. On 26 May 2000 the State Duma decided to proclaim an amnesty in connection with the fifty-fifth anniversary of victory in the Great Patriotic War of 1941-1945. This amnesty will alleviate to some extent the conditions of detention of remand prisoners and convicted persons. As of 1 October 2000 more than 168,000 people had been released from places of detention.

107. The Court Bailiffs Act (see para. 15 of this report) and the Enforcement Proceedings Act, both adopted in 1997, also have some bearing on this question.

108. The Enforcement Proceedings Act (art. 44) established the grounds and conditions for the application of coercive measures to enforce judicial acts and acts of other agencies in respect of the seizure of property, and listed these measures (art. 45). The Act also outlined the judicial protection of the rights of the creditor, the debtor, and other parties in the execution of enforcement actions (chap. XI).

Article 12

109. The objectives of legal proceedings in the Russian Federation are to bring crimes to light as promptly and comprehensively as possible, to determine the guilty parties and fix a just punishment, and to prevent the criminal prosecution of innocent persons. The criminal law of the Russian Federation serves as the basis for the activities of the law-enforcement agencies and the courts.

110. These points are reflected to the full in the draft code of criminal procedure of the Russian Federation. For example, article 6, paragraph 2, of the draft code stipulates that the procedure for prosecuting criminal cases must ensure protection against unlawful encroachments on the rights and freedoms of individuals and citizens, and that an innocent person who is wrongly indicted or convicted must be immediately and fully rehabilitated. Actions or decisions in the course of criminal proceedings which humiliate or degrade an individual or endanger the life or health of a party to the proceedings are prohibited (draft code, art. 10, para. 1). No party to the proceedings may be subjected to violence or cruel or degrading treatment of any kind (art. 11).

Article 13

111. The implementation of the requirements of article 13 of the Convention is guaranteed in the Russian Federation by article 46 of the Constitution, which states that:

> Everyone is guaranteed judicial protection of his or her rights and freedoms;
>
> Decisions and actions (or inaction) by Government bodies, local authorities, voluntary associations and officials may be appealed in the courts of law;
>
> Everyone has the right, in accordance with the international treaties of the Russian Federation, to have recourse to inter-State bodies for the protection of their human rights and freedoms, subject to exhaustion of all existing domestic remedies.

112. Furthermore, article 302, paragraph 2, of the Criminal Code, which criminalizes coercion to testify involving the use of force, bullying or torture, is specifically intended to protect the inviolability of the person as guaranteed under the Constitution of the Russian Federation and the Convention against Torture.

113. The conditions of detention of suspects and accused persons and procedures to safeguard their rights and legitimate interests, including the right to file complaints, are regulated by the Suspects and Accused Persons (Custody) Act, which was adopted by the State Duma on 15 July 1995.

114. The law of criminal procedure lays down a defined procedure for the consideration of omplaints lodged by persons in custody. Thus, in accordance with article 218 of the RSFSR Code of Criminal Procedure, the person conducting the initial inquiry or the investigator must forward any complaint regarding their actions, together with explanations, to a procurator within 24 hours. Under article 219, the procurator has 72 hours from receipt of the complaint to examine it and inform the complainant of his conclusions. If the procurator dismisses the complaint, he must state why it was not upheld.

115. Article 21 of the Suspects and Accused Persons (Custody) Act states that complaints about the actions or decisions of a court, a person conducting an initial inquiry, an investigator or a procurator that suspects or accused persons submit to the administration of a place of detention must be forwarded in accordance with the procedure laid down in the RSFSR Code of Criminal Procedure no later than three days after its submission.

Complaints regarding the use of unlawful investigative methods (information supplied by the Statistics Department of the Office of the Procurator-General)

	1997	1998	1999	January-June 1999	January-June 2000
Number of complaints	362	6 334	7 109	3 696	4 087
Number of complaints upheld	341	442	332	204	160

Legal irregularities arising from the use of unlawful investigative methods during the investigation or initial inquiry phases in agencies of the Ministry of Internal Affairs or the Federal Tax Police Service

	1997	1998	1999	January-June 1999	January-June 2000
Number of procuratorial recommendations made in connection with breaches of the law	1 690	747	776	308	334
Number of employees disciplined pursuant to procuratorial recommendations	-	591	534	211	213
Number of cases referred to the courts for criminal prosecution of employees for official misconduct	-	136	165	73	108

116. The Committee against Torture has expressed concern about communications alleging widespread human rights abuses in the Chechen Republic of the Russian Federation and the inability of the authorities to put a stop to these abuses. To date the Office of the Procurator-General has made considerable efforts to restore constitutional legality in the territory of the Chechen Republic, for example by re-establishing procuratorial bodies. This year has witnessed the establishment of a Procurator's Office at the republic level and of 13 city and district procurator's offices. It should be noted that local people are being actively recruited to law-enforcement agencies in Chechnya. Thus over 40 per cent of procuratorial staff are citizens of Chechen nationality.

117. Procuratorial bodies are focusing their attention on preventing breaches of the law by military personnel. All reports of irregularities committed by the military, including reports emanating from human-rights organizations and the media, are looked into. There is constant interaction with international human-rights organizations and the ICRC, and international humanitarian law is being publicized among the troops. The task of ensuring that the military operates within the law has been discussed at meetings with a delegation led by the United Nations High Commissioner for Human Rights and delegations from the non-governmental human-rights organizations Human Rights Watch and the International Federation of Human Rights Leagues.

118. Checks carried out by the Office of the Procurator-General have revealed that, in the first six months of 2000, a total of 16 crimes against civilians were recorded in Chechen territory (six murders, four cases of causing death by negligence, one rape and two cases of theft). Four criminal cases have already been referred to the courts.

119. Since the start of the counter-terrorist operation, the agencies of the Military Procurator's Office have instituted and handled 729 criminal cases against military personnel and cases involving the death of military personnel at the hands of armed criminal gangs. In 139 cases the preliminary investigation has been concluded and the matter has been referred to the courts for examination of the merits. In 25 cases criminal proceedings have been instituted against military personnel for offences against local people.

120. In pursuance of the Committee's recommendations, Presidential Decree No. 364 of 17 February 2000 established the post of special representative of the President for human and civil rights and freedoms in the Chechen Republic, and Mr. V.A. Kalamanov has been appointed to this position. The special representative and his subordinates receive communications and statements from Chechen citizens with a view to realizing their rights and freedoms. A total of 5,689 applications had been lodged as of 1 July 2000.

Article 14

121. With reference to the constitutional provision concerning the right of every citizen to seek redress from the State for injury sustained as a result of unlawful actions by government bodies or officials, there has been elaborated and incorporated into the draft code of criminal procedure of the Russian Federation that was adopted by the State Duma at first reading, a new

chapter concerning the procedure for seeking compensation in the event of unlawful actions of a court or bodies conducting pre-trial proceedings in a criminal case. The rules contained therein state on what grounds and in which circumstances the right of redress and the procedure for compensation shall apply.

122. As to the question of human rights abuses during the armed conflict in Chechnya, reference should be made to the Decision of the Constitutional Court of 31 July 1995 regarding verification of the constitutionality of a number of presidential decrees on measures to re-establish constitutional legality and law and order in the territory of the Chechen Republic. This decision states that, pursuant to articles 52 and 53 of the Constitution and to the International Covenant on Civil and Political Rights (art. 2, para. 3), victims of any wrongdoing, crime or abuse of authority should be provided with effective remedies and compensation for injury.

Article 15

123. Article 20, paragraph 3, of the RSFSR Code of Criminal Procedure categorically prohibits the extortion of testimony from accused persons or other parties to proceedings by means of violence, threats or other unlawful measures.

124. In hearing cases, courts decide not only on the relevance, sufficiency and reliability of evidence, but also on its admissibility. Testimony obtained by unlawful means, i.e. through the use of torture or other cruel treatment, has no legal value and cannot be used as evidence. This provision is enshrined in law in article 50 of the Constitution and article 69 of the RSFSR Code of Criminal Procedure, which state that in the administration of justice no evidence obtained in violation of federal law shall be admissible. Evidence obtained contrary to law shall be deemed to have no legal value and cannot be used as the basis of an indictment or to substantiate the facts of a case.

125. Claims by defendants, victims or witnesses that they have been coerced into giving testimony or by experts that they have been coerced into forming a particular conclusion by means of threats, blackmail, violence, bullying or torture must be verified by a court, as such action by investigators or other persons conducting an initial inquiry constitutes an offence under article 302 of the CCRF.

126. As a result of the recent introduction of jurors into Russian courts, investigative bodies now exercise greater care in assembling evidence with a view to seeking an indictment.

127. The objective and unbiased examination of cases by courts using the jury system is greatly facilitated by the application of more rigorous standards regarding the exclusion from proceedings of evidence obtained by unlawful means.

128. Article 435 of the RSFSR Code of Criminal Procedure stipulates that a judge may not acquaint jurors with evidence obtained contrary to law and is obliged to exclude such evidence from the proceedings. The use of inadmissible evidence at a trial can result in the quashing of the verdict.

Article 16

129. Article 16 makes it incumbent on States parties to the Convention to undertake to prevent in any territory under their jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture. Russia's practical measures of relevance to this article are described in detail in the sections of the present report pertaining to paragraphs 1 and 4 of the Convention.